THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.No.22501 of 2005

DATED:18-10-2005

BETWEEN:

PONUGOTI SOMESWARA RAO .. PETITIONER

AND

THE ELECTION OFFICER PACS

TORRUR VILLAGE AND MANDAL . RESPONDENT

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.No.22501 of 2005

ORDER:

Questioning the rejection of his nomination to the post of Director of Primary Agricultural Cooperative Society, Torrur, Warangal District (the society), petitioner filed this petition.

The contention of the learned counsel for the petitioner is that since the nomination of the petitioner was rejected without affording an opportunity of being heard, by simply relying on the objections said to have been preferred by unknown third parties, who produced the original receipt books belonging to the society before the Election Officer, who even without giving a thought as to how a third party could produce the original documents belonging to the society were produced before him when they should be in the custody of the Secretary or person in charge of the society, was in error in taking into consideration of those documents for rejecting the nomination of the petitioner. It is his contention that in fact the Secretary of the Society had lodged a complaint before the Sub Inspector of Police, Nellikudur on 15.10.2005 stating that petitioner cleared all the dues to the society on 13.10.2005 and that he deposited that amount into the bank on 14.10.2005, and that the persons named

therein assaulted him for his refusal to give a certificate that the petitioner owes some amount to the society, and that they after having abused him in a filthy language, had forcibly taken away the receipt book containing receipts bearing No.727282, 727251 to 727300 and contended that had the petitioner been given an opportunity of being heard he would have shown that the allegations leveled against him are incorrect, and would have shown to the hilt that he is not a defaulter by the time of his filing of the nomination. Strongly relying on the following observation in **HARIKRISHANA LAL v BABU LAL MARANDI**:

> *A statutory duty is cast on the Returning Officer to scrutinize the nomination papers on the appointed date without adjourning the proceedings. If the Returning Officer finds any irregularity or defect in the nomination paper, he may hold an enquiry suo motu affording the candidate, whose nomination is under scrutiny, an opportunity to satisfy the Returning Officer that no such defect or irregularity exists."*

he contended that since the procedure prescribed in the A.P. Cooperative Societies Act, 1964 and the Rules made thereunder with regard to election to cooperative societies which are in pari materia with Section 33 of the Representation of Peoples Act, non-affording of an opportunity of being heard to the petitioner is wholly violative of principles of natural justice and so the order rejecting the nomination of the petitioner is unsustainable.

It is pertinent to note that the observations in Harikrishna Lal case (1 supra) relied on by the learned counsel for the petitioner are made in an appeal arising out of an election petition, but not in a writ petition questioning the rejection of nomination.

It is well known that an order rejecting or accepting nomination is an intermediatory stage in an election process and so this Court will not, usually, entertain petitions under Article 226 of the Constitution of India questioning the orders relating to acceptance or rejection of nomination since the aggrieved party has an effective and efficacious remedy of filing an election petition as held by this Court in **V.NARAYANA v ELECTION OFFICER,MUNICIPAL COMMISSIONER, ALWAL MUNICIPALITY, R R DISTRICT AND ANOTHER, A.P.SARPANCH ASSOCIATION AND OTHERS v GOVERNMENT OF A.P. PANCHAYAT RAJ DEPARTMENT AND OTHERS, GUTHAKONDA KANAKA**

DURGA v STATE ELECTION COMISSIONER, GOVERNMENT OF ANDHRA PRADESH, HYDERABAD AND OTHERS AND the Apex Court in **C.SUBRAHMANYAM v K.RAMANJANEYULU AND OTHERS** and **SRI SANT SADGURU JANARDHAN SWAMY S D U SAMSTAN v. STATE OF MAHARASTRA.**

So all the contentions now raised by the petitioner can be raised before the Tribunal challenging the rejection of the nomination.

Accordingly, the petition is dismissed without costs giving liberty to the petitioner to question the order rejecting his nomination in an appropriate forum.

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18-10-2005

kvrm/dvs